

August 6, 2019

Reference Number 19-0091

Ms. Amy Valdes
Dynamik, Inc.
3990 Old Town Ave., Suite C107
San Diego, CA 92110

Dear Ms. Valdes:

This letter responds to your appeal of the California Unified Certification Program's (CUCP) December 28, 2018 denial of Dynamik Inc.'s (Dynamik) application for Disadvantaged Business Enterprise (DBE) certification under the rules of 49 CFR part 26 (the Regulation). After considering the entire record, we affirm CUCP's decision. *See* section 26.89(f)(1).

CUCP based its denial decision on multiple ownership and control grounds. Of those, we affirm under sections 26.69(c)(1) and (e) regarding ownership.

Background

Your husband Dominic Carnevale founded Dynamik in 2002 as the sole owner. He is not socially and economically disadvantaged (SED) under the Regulation. In 2016, you acquired 51% ownership through a stock transfer and became President. Mr. Carnevale retained 49% ownership and is Vice President. You state that when you became owner you took a more than \$50,000 pay cut and that Dynamik gave you a \$30,000 signing bonus. You claim that you contributed the post-tax remainder (amount unspecified) of the \$30,000 to the firm.

Discussion

We note first that as the applicant firm, Dynamik bears the burden of proving that, more likely than not, the firm meets the Regulation's certification requirements. *See* section 26.61(b). An applicant firm's ownership by SED individuals, including their contribution of capital or expertise to acquire their ownership interests, must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. Further, proof of a contribution of capital should be submitted at the time of the application. *See* sections 26.69(c)(1) and (e).

CUCP found that you do not meet the requirements of sections 26.69(c)(1) and (e) because you did not contribute actual capital in exchange for the stock you acquired. CUCP also determined that the "sweat equity" you said you contributed does not qualify as a contribution of expertise

under section 26.69(c)(1) and (e). You contend that your pay cut and contribution of the post-tax remainder of your signing bonus, taken together, constitute a substantial capital contribution from you. Regarding sweat equity, you clarify on appeal that you define the term as “stakeholders tak[ing] less than market income in order to allow a business to grow.”¹

First, a pay cut is not a capital contribution. Second, you provide no evidence of the cash contribution you claim. Third, you do not demonstrate a contribution of expertise that qualifies under the rules of section 26.69(e). As a result, the Regulation considers the 51% ownership you acquired – in exchange for no demonstrated contribution of capital or expertise – to be pro forma, insubstantial. Dynamic is ineligible because it did not prove “real, substantial, and continuing” 51% ownership by a disadvantage person.

Conclusion

We find substantial evidence to support CUCP’s decision that you do not own Dynamik within the meaning of the Regulation. Thus, we affirm. *See* section 26.89(f)(1). This decision is administratively final and not subject to petitions for review.

Sincerely,

Samuel F. Brooks
Appeal Team Lead
Disadvantaged Business Enterprise Division

cc: CUCP

¹ Appeal Letter at 1.